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Agenda Item 3a

April 12, 2011

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

- I. **SUBJECT:** AB 344 (Furutani) – As Amended on February 28, 2011
Final Compensation and Post Retirement Employment
- II. **PROGRAM:** Legislation
- III. **RECOMMENDATION:** Support
- IV. **ANALYSIS:**

Summary

AB 344 would prohibit exceptions for members not in a group or class that allow recognition of increases in compensation earnable beyond increases reported for all employees in the same membership classification. It would also prohibit a retired annuitant from serving on a temporary or emergency basis without reinstatement beyond the 960 hour per year limit.

Background

Final Compensation for Members Not In A Group or Class

CalPERS has worked hard to curtail an individual from taking extraordinary steps to enhance their retirement benefits by employing sound principals to provide consistent treatment of compensation throughout a member's career and consistent treatment of compensation among a class of employees. This commitment extends back to the enactment of the CalPERS-sponsored legislation, SB 53 (Russell) in 1993 which:

- Provided a definition of compensation
- Provided for full funding of member benefits
- Reduced the ability to manipulate compensation
- Prohibited the use of cash conversions, final settlement pay and termination pay for purposes of calculating members' retirement benefits;
- Provided the CalPERS Board with clear oversight of benefits
- Repealed the ability of CalPERS employers to hire retired annuitants for a limited but indefinite duration

- Simplified internal audit practices

Under current law, increases in compensation earnable granted to an employee, who is not in a group or class, is limited to the average increase in compensation earnable for all employees who are in the same membership classification. However, existing law also allows the Board to recognize increases in compensation earnable during the final compensation period of public agency and school members who are not part of a class and may not have a related group that is close enough to provide a reasonable proxy in determining allowable final compensation, if the employee or contracting agency on behalf of the employee formally requests and exemption.

Retired Annuitants

Existing law allows CalPERS employers to hire retired annuitants without returning to active service under specified conditions. For example, a retired annuitant must possess specialized skills that are needed for a limited time or during an emergency to prevent a stoppage of public services. These appointments may not exceed 960 hours per fiscal year and the total compensation for these appointments may not exceed the maximum pay scale for the vacant position.

There are some positions that are not subject to the 960 hour in a fiscal year limit:

- Member of a Board, Commission, or Advisory Committee
- Appointive Member of a Public Agency Governing Body
- Appointment by Legislative Committee or the Legislature
- Election Officer or Juror
- Elective Position
- Preparation for Litigation or Testimony for Former Employer
- School Crossing Guard

Existing law permits the governing body of a public agency to request an extension to the 960 hour limit by submitting a resolution to CalPERS for approval. The process to request approval is as follows:

- The employer presents a resolution passed by its governing body to the Board requesting an employment extension to a specified date, accompanied by a separate request for the extension which provides the justification for the employment extension.
- The Board has 60 days to approve or disallow the extension.

- If the Board fails to respond within 60 days of receipt of the request, the extension is automatically approved.
- An employment appointment, including all extensions, may not exceed a total of one year (12 months).

CalPERS approves an average of 25 extension requests a year. While many requests are approved, a small number each year are denied because the request for the extension is asking for the employment to exceed 12 months.

Proposed Changes

Specifically, AB 344 would:

- Prohibit exceptions for members not in a group or class that allow recognition of increases in compensation earnable beyond increases reported for all employees in the same membership classification.
- Eliminate the ability of a CalPERS employer to request that a retired annuitant serve without reinstatement beyond the 960 hour limit in any fiscal year.

Legislative History

2011 AB 1028 (PER&SS) – Makes technical and minor policy changes to the Public Employees Retirement Law (PERL). Among other things, it would further clarify that: 1) appointments of retired CalPERS members must be temporary and must require specialized skills; 2) members may only be permitted to exceed the 960 hours once; and 3) annuitant payrates are limited to the maximum published pay schedule for the vacant position. It also clarifies members cannot be concurrently employed as a retired annuitant under a separate employment after retirement provision.
CalPERS' Position: Sponsor

SB 27 (Simitian) – Among other things, would require the end of career pay increases to members who are not part of a group or class to be limited to the increase provided to similarly situated members in the closest related group of their employer or to the entire membership classification, during the applicable final compensation period and preceding two years or for the entire membership classification.
CalPERS' Position: Pending

- 1993 Chapter 1297 (SB 53, Russell) – Narrowed and clarified what would be considered compensation earnable to be included in CalPERS members' final compensation calculations. Among other things, it prohibited items included in final settlement pay from being included in the calculation of members' final compensation, and that pay increases provided in members' final compensation period must apply to all employees in that class in order to be recognized. It also repealed the ability of CalPERS employers to hire retired annuitants for a limited but indefinite duration.
CalPERS' Position: Support

Issues

1. Arguments on Support

According to the Author:

"The recent City of Bell scandal brought to light an area of the Public Employees' Retirement Law that needs to be changed ... Even though an exception to the "group or class" rule was never granted in the City of Bell case, removing this provision from current law, this bill will make sure that option never exists in the future."

"This bill would eliminate CalPERS' ability to extend employment of retired annuitants beyond the current 960 hour limit."

There is currently no known support.

2. Arguments by those in Opposition

There is currently no known opposition.

3. Potential Conflicts With CalPERS Omnibus Bill

AB 344 would remove CalPERS employers' ability to request an extension to the 960 hour limit. The annual CalPERS omnibus bill, AB 1028 (PER&SS) amends the same provision of the PERL to, among other things, clarify that 1) appointments of retired CalPERS members must be temporary and must require specialized skills; 2) members may only be permitted to exceed the 960 hour limit only once. While the proposed changes conflict with each other, CalPERS staff has no policy or technical objection to eliminating extensions to the 960-hour limit. Staff would only note that it may increase instances of CalPERS employers hiring retired

annuitants as independent contractors or engaging them as employees of a third party.

4. Exceptions For School Members Not Part Of A Group or Class

AB 344 would eliminate an employee or employer's ability to request the Board grant an increase in compensation earnable for State and public agency members of CalPERS that are not part of a group or class during their final compensation period beyond increases reported for all employees in the same membership classification. This same exception is available to school members that are not part of a group or class, but the current version of the bill failed to address this exception. The author has been made aware of this discrepancy and plans to amend the bill to remove the exception that applies to school members that are not in a group or class.

5. Legislative Policy Standards

The Board's Legislative Policy Standards recommend a support position on proposals that add protection to the trust. AB 344 could ease administration, although minimal, by eliminating staff need to process requests for these two exceptions, therefore staff recommends the Board adopt a **support** position on this bill.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

Program Costs

None identified.

Administrative Costs

Eliminating these two different exceptions could result in a minimal reduction of administrative workload.

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